

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION  
and is not binding precedent of the Board

Paper No.

19

Filed by: Trial Section Merits Panel  
Box Interference  
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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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ALBERT RENE,

Junior Party  
(Patent 5,603,433),

v.

STEVEN J. BIEREND, CLYDE L. TICHENOR,  
and IRWIN GINSBURGH,

Senior Party  
(Application 08/875,673).

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Patent Interference No. 104,634

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Before LEE, GARDNER-LANE and MEDLEY, Administrative Patent Judges.

MEDLEY, Administrative Patent Judge.

**JUDGMENT PURSUANT TO 37 CFR § 1.662**

On May 3, 2001, senior party Bierend filed a paper  
entitled "Petition to Dismiss Interference" (Paper 17) in

which it is represented that junior party's involved patent 5,603,433 and senior party's involved application 08/875,673 are now commonly owned by Electro Spray Company<sup>1</sup>. On May 8, 2001, Electro Spray was ordered to show cause why adverse judgment as to the subject matter of the count should not be entered against junior party Rene (Paper 18). Electro Spray had 20 days from May 8, 2001 to respond to the ORDER TO SHOW CAUSE. Electro Spray did not respond.

During a telephone conference call initiated by Board personnel on May 29, 2001, counsel for Rene indicated that no response to the ORDER TO SHOW CAUSE was sent. Counsel for Rene further indicated that it would (1) contact counsel for Bierend to find out if a response would be sent, and (2) get back to Board personnel with an answer. No further communication was made to the Board.

Upon consideration of the record, it is

ORDERED that judgment on priority as to Count 1 (Paper 1 at 5), the sole count in the interference, is awarded against junior party ALBERT RENE.

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<sup>1</sup> Initially, Bierend represented that Electro Spray was the real party in interest for Bierend (Paper 14). Initially, Rene represented that Albert Rene was the real party in interest for Rene (Paper 5).

FURTHER ORDERED that junior party ALBERT RENE is not entitled to a patent containing claims 1-5 (corresponding to Count 1) of U.S. Patent 5,603,433, granted 18 February 1997, based on application 08/429,127, filed 26 April 1995.

FURTHER ORDERED that a copy of this paper shall be made of record in files of application 08/875,673 and U.S. Patent 5,603,433.

FURTHER ORDERED that if there is a settlement agreement, attention is directed to 35 U.S.C. § 135(c) and 37 CFR § 1.666.

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JAMESON LEE	)	
Administrative Patent Judge	)	
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_____	)	BOARD OF PATENT
SALLY GARDNER-LANE	)	APPEALS AND
Administrative Patent Judge	)	INTERFERENCES
	)	
	)	
_____	)	
SALLY C. MEDLEY	)	
Administrative Patent Judge	)	

cc (via federal express):

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